

SECOND REGULAR SESSION

# SENATE BILL NO. 745

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DAYS.

Pre-filed December 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

3069S.011

## AN ACT

To repeal sections 475.010, 475.045, and 475.105, RSMo, and to enact in lieu thereof four new sections relating to guardianship of minors and incapacitated adults.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 475.010, 475.045, and 475.105, RSMo, are repealed  
2 and four new sections enacted in lieu thereof, to be known as sections 475.010,  
3 475.045, 475.046, and 475.105, to read as follows:

475.010. When used in this chapter, unless otherwise apparent from the  
2 context, the following terms mean:

3 (1) "Adult", a person who has reached the age of eighteen years;

4 (2) "Claims", liabilities of the protectee arising in contract, in tort or  
5 otherwise, before or after the appointment of a conservator, and liabilities of the  
6 estate which arise at or after the adjudication of disability or after the  
7 appointment of a conservator of the estate, including expenses of the adjudication  
8 and of administration. The term does not include demands or disputes regarding  
9 title of the protectee to specific assets alleged to be included in the estate;

10 (3) "Conservator", one appointed by a court to have the care and custody  
11 of the estate of a minor or a disabled person. A "limited conservator" is one  
12 whose duties or powers are limited. The term "conservator", as used in this  
13 chapter, includes "limited conservator" unless otherwise specified or apparent  
14 from the context;

15 (4) "Disabled" or "disabled person", one who is:

16 (a) Unable by reason of any physical or mental condition to receive and  
17 evaluate information or to communicate decisions to such an extent that the  
18 person lacks ability to manage his financial resources[.]; or

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 (b) The term "disabled" or "disabled person", as used in this chapter  
20 includes the terms "partially disabled" or "partially disabled person" unless  
21 otherwise specified or apparent from the context;

22 (5) "Eligible person" or "qualified person", a natural person, social service  
23 agency, corporation or national or state banking organization qualified to act as  
24 guardian of the person or conservator of the estate pursuant to the provisions of  
25 section 475.055;

26 (6) "Guardian", one appointed by a court to have the care and custody of  
27 the person of a minor or of an incapacitated person. A "limited guardian" is one  
28 whose duties or powers are limited. **A "standby guardian" is one approved**  
29 **by the court to temporarily assume the duties of guardian of a minor**  
30 **child under section 475.045.** The term "guardian", as used in this chapter,  
31 includes "limited guardian" **and "standby guardian"** unless otherwise specified  
32 or apparent from the context;

33 (7) "Guardian ad litem", one appointed by a court, in which particular  
34 litigation is pending, to represent a minor, an incapacitated person, a disabled  
35 person, or an unborn person in that particular proceeding or as otherwise  
36 specified in this code;

37 (8) "Habilitation", instruction, training, guidance or treatment designed  
38 to enable and encourage a mentally retarded or developmentally disabled person  
39 as defined in chapter 630, RSMo, to acquire and maintain those life skills needed  
40 to cope more effectively with the demands of his **or her** own person and of his **or**  
41 **her** environment;

42 (9) "Incapacitated person", one who is unable by reason of any physical  
43 or mental condition to receive and evaluate information or to communicate  
44 decisions to such an extent that he **or she** lacks capacity to meet essential  
45 requirements for food, clothing, shelter, safety or other care such that serious  
46 physical injury, illness, or disease is likely to occur. The term "incapacitated  
47 person" as used in this chapter includes the term "partially incapacitated person"  
48 unless otherwise specified or apparent from the context;

49 (10) "Least restrictive environment", that there shall be imposed on the  
50 personal liberty of the ward only such restraint as is necessary to prevent [him]  
51 **the ward** from injuring himself **or herself** and others and to provide [him] **the**  
52 **ward** with such care, habilitation and treatment as are appropriate for [him] **the**  
53 **ward** considering his **or her** physical and mental condition and financial means;

54 (11) "Manage financial resources", either those actions necessary to

55 obtain, administer, and dispose of real and personal property, intangible property,  
56 business property, benefits, income or any assets, or those actions necessary to  
57 prevent waste, loss or dissipation of property, or those actions necessary to  
58 provide for the care and support of such person or anyone legally dependent upon  
59 **[him] such person** by a person of ordinary skills and intelligence commensurate  
60 with his **or her** training and education;

61 (12) "Minor", any person who is under the age of eighteen years;

62 (13) "Partially disabled person", one who is unable by reason of any  
63 physical or mental condition to receive and evaluate information or to  
64 communicate decisions to such an extent that **[he] such person** lacks capacity  
65 to manage, in part, his **or her** financial resources;

66 (14) "Partially incapacitated person", one who is unable by reason of any  
67 physical or mental condition to receive and evaluate information or to  
68 communicate decisions to the extent that **[he] such person** lacks capacity to  
69 meet, in part, essential requirements for food, clothing, shelter, safety, or other  
70 care without court-ordered assistance;

71 (15) "Protectee", a person for whose estate a conservator or limited  
72 conservator has been appointed or with respect to whose estate a transaction has  
73 been authorized by the court under section 475.092 without appointment of a  
74 conservator or limited conservator;

75 (16) "Social service agency", a charitable organization organized and  
76 incorporated as a not-for-profit corporation under the laws of this state and which  
77 qualifies as an exempt organization within the meaning of section 501(c)(3), or  
78 any successor provision thereto of the federal Internal Revenue Code;

79 (17) **"Standby guardian", one who is authorized to have the**  
80 **temporary care and custody of the person of a minor or of an**  
81 **incapacitated person under the provisions of section 475.046;**

82 (18) "Treatment", the prevention, amelioration or cure of a person's  
83 physical and mental illnesses or incapacities;

84 **[(18)] (19) "Ward" [is], a minor or an incapacitated person for whom a**  
85 **guardian [or], limited guardian, or standby guardian** has been appointed.

475.045. 1. Except in cases where they fail or refuse to give required  
2 security or are adjudged unfit for the duties of guardianship or conservatorship,  
3 or waive their rights to be appointed, the following persons, if otherwise qualified,  
4 shall be appointed as guardians or conservators of minors:

5 (1) The parent or parents of the minor, except as provided in section

6 475.030;

7 (2) If any minor over the age of fourteen years has no qualified parent  
8 living, a person nominated by the minor, unless the court finds appointment  
9 contrary to the best interests of the minor;

10 (3) Where both parents of a minor are dead, any person appointed **under**  
11 **this section or section 475.046** by the will of the last surviving parent, who  
12 has not been adjudged unfit or incompetent for the duties of guardian or  
13 conservator.

14 2. Unfitness of any of the persons mentioned in subsection 1 for the duties  
15 of guardianship or conservatorship may be adjudged by the court after due notice  
16 and hearing.

17 3. If no appointment is made under subsection 1 **of this section**, the  
18 court shall appoint as guardian or conservator of a minor the most suitable  
19 person who is willing to serve **and whose appointment serves the best**  
20 **interests of the child to a stable and permanent placement.**

475.046. 1. As used in this section, the following terms shall  
2 mean:

3 (1) "Custodial parent", the parent of a minor child who has been  
4 awarded sole or joint physical custody of that child, or the parent of an  
5 incapacitated adult child who has been appointed as guardian of that  
6 child, by an order or judgment of a court of this state or of another  
7 state or territory of the United States, or if there is no such order or  
8 judgment, the parent with whom the child primarily resides;

9 (2) "Parent", the biological or adoptive mother or father of a  
10 child whose parental rights have not been terminated under chapter  
11 211, RSMo, including:

12 (a) A person registered as the father of the child by reason of an  
13 unrevoked notice of intent to claim paternity under section 192.016,  
14 RSMo;

15 (b) A person who has acknowledged paternity of the child and  
16 has not rescinded that acknowledgment under section 193.215, RSMo;  
17 and

18 (c) A person presumed to be the natural father of the child under  
19 section 210.822, RSMo;

20 (3) "Seriously ill", a significant likelihood that a person will  
21 become incapacitated or die within twelve months.

22           2. A custodial parent may designate a person to act as standby  
23 guardian of a minor or incapacitated adult child by a will that complies  
24 with the requirements of section 474.320, RSMo, or by a separate  
25 written instrument which is dated and is either duly executed and  
26 acknowledged by the custodial parent or is signed by the custodial  
27 parent in the presence of at least two disinterested witnesses and  
28 subscribed by the witnesses. If the custodial parent executes more than  
29 one document designating a standby guardian and there is a conflict  
30 between the documents as to the person designated, the document  
31 bearing the latest date shall control.

32           3. If a custodial parent who has designated a standby guardian  
33 is or becomes seriously ill, the custodial parent or the person  
34 designated as standby guardian may file a petition in the probate  
35 division of the circuit court of the county which would be of proper  
36 venue for the appointment of a guardian of the minor or incapacitated  
37 adult child seeking appointment of the person as standby guardian. A  
38 copy of the will or separate written instrument designating the standby  
39 guardian and a consent to act as standby guardian signed by the person  
40 designated shall be filed with the petition, which petition shall state:

41           (1) The name, age, domicile, actual place of residence, and  
42 mailing address of the minor or incapacitated adult child;

43           (2) The name and address of the custodial parent and of the  
44 designated standby guardian;

45           (3) The name and address of each parent of the minor or  
46 incapacitated adult child and whether that parent is living or dead;

47           (4) The name and address of the spouse, and the names, ages, and  
48 addresses of all living children of the minor or incapacitated adult  
49 child;

50           (5) If the child has been adjudicated incapacitated, the date of  
51 adjudication and the name and address of the court which entered the  
52 judgment; and

53           (6) The reasons why the appointment of a standby guardian is  
54 sought.

55 Proceedings on the petition shall be conducted in the same manner as  
56 would be applicable in a case for appointment of a successor guardian  
57 under section 475.115.

58           4. The court shall determine appointment of a standby guardian

59 in accordance with the best interests of the minor or incapacitated  
60 adult child after considering all relevant factors, including:

61 (1) Whether there is a parent other than the custodial parent  
62 and, if so, whether the other parent is willing, able, and fit to assume  
63 the duties of a parent;

64 (2) The suitability of a person nominated by the child if the child  
65 is, at the time of hearing, able to communicate a reasonable choice; and

66 (3) The desirability of providing arrangements for the care,  
67 custody, and control of the child which shall minimize stress and  
68 disruption for the child and avoid placement of the child in foster or  
69 similar care pending appointment of a guardian if the custodial parent  
70 is adjudicated incapacitated or dies.

71 5. If it appears to the court that a standby guardian should be  
72 appointed for a minor or incapacitated adult child, the court may  
73 appoint a standby guardian.

74 6. The authority of a person to act as standby guardian for a  
75 minor or incapacitated adult shall only take effect as follows:

76 (1) If the person has previously been appointed by the court as  
77 standby guardian, upon the granting of letters of standby guardianship  
78 to the person previously appointed as provided in the order appointing  
79 the standby guardian; or

80 (2) If the person has not previously been appointed by the court  
81 as standby guardian, either because a petition for appointment has not  
82 been filed or because a petition has been filed but the proceedings are  
83 still pending, upon the first to occur of the following:

84 (a) The consent of the custodial parent in a writing duly  
85 executed and acknowledged by the custodial parent;

86 (b) Entry of an order adjudicating the custodial parent to be  
87 incapacitated; or

88 (c) The death of the custodial parent.

89 The person shall, within ten days after he or she begins to act as  
90 standby guardian, notify the court in writing of that fact and of the  
91 reasons therefor. The court may grant letters of standby guardianship  
92 to the person or, if the court deems it advisable, conduct a hearing to  
93 determine the propriety of the person having begun, and continuing,  
94 to act as standby guardian and the propriety of issuing letters of  
95 standby guardianship to the person.

96           7. A person acting as standby guardian of a minor or  
97 incapacitated adult child shall, within sixty days after he or she begins  
98 to act, petition the court for appointment of the standby guardian or  
99 some other qualified person as guardian of the minor or incapacitated  
100 adult child. Proceedings on the petition shall be conducted in the same  
101 manner as would be applicable in a case for appointment of a successor  
102 guardian under section 475.115.

103            **8. Nothing in this section shall be construed to:**

(1) Deprive a parent of his or her legal rights with respect to a minor or incapacitated adult child of that parent, including court ordered visitation with the child, nor to authorize a grant of authority to a standby guardian which would supersede any such rights; or

108           **(2) Relieve a parent of his or her legal obligations or duties to a**  
109 **minor or incapacitated adult child, including a duty to support the**  
110 **child in accordance with a court or administrative order.**

111           9. Except to the extent determined by the court to be  
112 inconsistent with the provisions of this section or as expressly provided  
113 in this section, the laws applicable to guardianship proceedings shall  
114 apply to all proceedings under this section.

475.105. 1. When a duly appointed guardian or conservator has given  
2 bond, as required by law, and the bond has been approved, letters under the seal  
3 of the court shall be issued to [him] **the person appointed**. Such letters shall  
4 specify whether they are of guardianship [or], limited guardianship, **or standby**  
5 **guardianship** of the person, or conservatorship or limited conservatorship of the  
6 estate, or both, and the original or duly certified copies thereof shall be prima  
7 facie evidence of the facts therein stated.

8           2. Letters of guardianship and conservatorship for minors may be in the  
9 following form:

10 IN THE PROBATE DIVISION  
11 OF THE CIRCUIT COURT OF  
12 . . . . . COUNTY, MISSOURI  
13 LETTERS OF **(STANDBY)** GUARDIANSHIP  
14 (AND CONSERVATORSHIP)  
15 OF MINOR

16 Estate No. . . . .

17 On . . . . . was appointed and has qualified

18 as **(standby)** guardian of the person (and conservator of the estate) for the  
 19 following minor(s):

20 ..... Born ....., 19....

21 ..... Born ....., 19....

22 ..... Born ....., 19....

23 ..... Born ....., 19....

24 By reason thereof, the above-named **(standby)** guardian (and conservator)  
 25 is authorized and empowered to perform the duties of such **(standby)** guardian  
 26 (and conservator) as provided by law under the supervision of the court having  
 27 care and custody of the person (and of the estate) of the above-named minor(s).

28 IN TESTIMONY WHEREOF, the undersigned Clerk has signed these  
 29 letters and affixed the seal of this court on .....

30 .....  
 31 Clerk

32 Recorded on ....., in Book ..... at Page .....

33 .....  
 34 Clerk

35 3. Letters of guardianship and conservatorship for incapacitated and  
 36 disabled persons may be in the following form:

37 IN THE PROBATE DIVISION  
 38 OF THE CIRCUIT COURT OF  
 39 ..... COUNTY, MISSOURI  
 40 LETTERS OF **(STANDBY)** GUARDIANSHIP  
 41 OF INCAPACITATED PERSON  
 42 (AND CONSERVATORSHIP  
 43 OF DISABLED PERSON)

44 Estate No. ....

45 On ....., ..... was appointed and has qualified as  
 46 **(standby)** guardian of the person (and conservator of the estate) for .....  
 47 ....., an incapacitated (and disabled) person.

48 By reason thereof, the above-named **(standby)** guardian (and  
 49 conservator) is authorized and empowered to perform the duties of such  
 50 **(standby)** guardian (and conservator) as provided by law under the supervision  
 51 of the court having care and custody of the person (and estate) of the  
 52 above-named incapacitated (and disabled) person.

53 IN TESTIMONY WHEREOF, the undersigned Clerk has signed these



54 letters and affixed the seal of this court on . . . ., [19] **20**. . .

55 .....

56 Clerk

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Unofficial

Bill

Copy